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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.24 & 25 of 2006

The Commissioner of Income Tax ,
Chennai. ..Appellant in both the cases.

Vs

P.Damodaran, ..Respondent in both the cases.

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench in I.T.A. Nos.1809 and 1810/Mds/2000 for the assessment years 1995-96 and 1997-98. (ITA.No.127/2000-2001 and 128/2001-2001 respectively dated 28.8.2000 on the file of the Commissioner of Income-Tax (Appeals) V, Chennai-34, against GIR NO.35235-D dated 28.3.2000, 30.3.2000 on the file of the Income-Tax Officer, City Ward III (2), Chennai-6.)

For Appellant : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income-Tax Department.

JUDGMENT

(Judgment of the Court was delivered by P.P.S.Janarthana Raja, J.)

The present appeals are filed under Section 260A of the Income Tax Act, 1961 by the Revenue, in I.T.A. Nos.1809 and 1810/Mds/2000, passed by the Income Tax Appellate Tribunal, Madras, 'B' Bench raising the following substantial question of law.

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"Whether in the facts and circumstances of the case, the Tribunal was right in upholding the assessee's claim for deduction u/s 80IA, when he himself had given a sworn statement to the central excise authorities that he did not have any activity of manufacture in the said premises?"

2. The facts leading to the above question of law are as under:

i) The assessee had claimed deduction under Section 80IA(2)(iv)(c) of the Income Tax Act for manufacturing cable joining kit used in the telecommunication industry at Pondicherry, which is an industrially backward area. The assessment order originally passed for the Assessment Year 1995-96, was set aside by the Commissioner of Income Tax (Appeals) with a clear direction to the Assessing Officer to examine the claim of the assessee with evidence in support of the return filed by him. The Assessing Officer thereafter passed an assessment order under Section 143(3) of the Income Tax Act, read with 250 on 30.03.2000. For the assessment year 1997-98, the Assessing Officer completed the assessment under Section 143(3) of the Act. The Assessing Officer rejected the assessee's claim for deduction under Section 80IA(2)(iv)(c) relying upon the results of proceedings taken by the Central Excise authorities against the assessee, by holding that the assessee did not carry on any manufacturing or production activities, but was indulging in stock transfer and in raising sales invoices from Pondicherry. Finally, the Assessing Officer held that the assessee was not able to establish that any manufacturing activity had been commenced for claiming deduction under Section 80IA of the Act.

ii) Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), and claimed that the Assessing Officer rejected his claim without any independent enquiry and also ignored the real fact that the assessee had indulged in manufacturing activity at Pondicherry, and was therefore entitled for relief under Section 80-IA. After hearing the arguments, the Commissioner of Income Tax (Appeals) came to the conclusion that the Assessing Officer, on his own, had not made on-the-spot enquiry so as to ensure the real facts and correctness of the assessee's claim that he had carried on manufacturing activity of cable joining kits at Pondicherry. The C.I.T. (A) further found that even after the assessment had been set aside for the Assessment Year 1995-96 with a direction to examine the claim of the assessee under Section 80IA denovo, no such enquiries were made by the Assessing Officer.

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The C.I.T. (A) finally held that the assessee is entitled to relief under Section 80IA of the Act.

iii) Aggrieved by the order of the C.I.T. (A), the Revenue filed an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal dismissed the appeal filed by the Revenue and confirmed the order of the C.I.T (A). The standing counsel appearing for the Revenue submitted that the Tribunal was wrong in allowing the deduction under Section 80IA of the Act and failed to appreciate that the assessee himself had admitted in the statement dated 12.12.1996 before the Assistant Commissioner of Central Excise (Anti Evation), Trichy, that the premises was used only as godown for packing goods in carton boxes containing the cable joining materials. He also further submitted that the Tribunal had not appreciated the statement recorded on 11.06.1997 that the assessee had admitted that he was engaged only in trading activity of buying and selling.

3. We heard the arguments of the counsel. The assessee had claimed that he had started his factory at Pondicherry where manufacturing activity was done, whereas the stand of the Revenue was that, at Pondicherry, no manufacturing activity was carried on other than using the premises for correspondence and for despatching the goods by the assessee. The Tribunal had given a finding that the Assessing Officer had not made any enquiry to find out whether the assessee had carried out any manufacturing activity at Pondicherry, even after the matter was remanded back to his file. Similarly, there was nothing to suggest that the Central Excise Authorities ever visited the assessee's factory to find out the verasity of his claim that the manufacturing activities were being carried out at his factory premises at Pondicherry. Also, it is found that the Central Excise authorities visited only the office premises of the assessee and examined certain documents. Hence, we find no justification in rejecting the assessee's claim for deduction under Section 80IA merely relying on the observation of the Central Excise authorities. Further, it was a factual finding by the authorities below that the machineries installed in the premises and the raw materials utilised by the assessee, suggest that there was a production of article or thing for the purpose of using the same in the telecommunication industry. When the factual finding itself is that the asessee manufactured telephone cables joining kits, the assessee is entitled for benefit available under Section 80IA of the Act.

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4. In view of the foregoing conclusions, we find no error in the order of the Income Tax Appellate Tribunal and hence no substantial question of law arises for consideration of this Court. Hence, the above tax cases are dismissed. No costs. Consequently, the connected TCMP No.26 of 2006 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Assistant Registrar, Income Tax Appellate Tribunal,
Rajaji Bhavan III Floor, Besant Nagar, Chennai-90.

2.The Commissioner of Income Tax, Chennai.

3.The Commissioner of Income Tax (Appeals) V, Chennai-34.

4.The Income Tax Officer, City Ward-III (2) Chennai-6.

one cc to Mrs.Pushya Sitaraman, Senior Standing Counsel for
Income Tax Department (SR.No.5112)

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